

Before the  
Federal Communications Commission  
Washington, DC 20554 **2001 OCT 15 P 5:13**

In the Matter of	)	
	)	
Request for Waiver by	)	
	)	
Montville Township Public Schools	)	File No. SLD-175162
Montville, New Jersey	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.	)	

**ORDER**

**Adopted: October 5, 2001**

**Released: October 10, 2001**

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Waiver Request filed by Montville Township Public Schools (Montville), Montville, New Jersey. Montville seeks a waiver of the Commission's rules governing discounts for services under the schools and libraries universal service support mechanism.<sup>1</sup> For the reasons set forth below, we deny Montville's Waiver Request.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>2</sup> In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.<sup>3</sup> The Administrator must post the FCC Form 470 on its web site, and the applicant is required to wait 28 days before making a commitment with a selected service provider ("28-day waiting period").<sup>4</sup> The Commission's rules provide a limited

<sup>1</sup> Letter from Dominic J. Butler, Montville Township Public Schools, to Federal Communications Commission, filed March 23, 2001 (Waiver Request).

<sup>2</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>3</sup> 47 C.F.R. §§ 54.504(b)(1), (b)(3).

<sup>4</sup> 47 C.F.R. §§ 54.504(b)(3) and (4); § 54.511.

exemption for the 28-day competitive bidding requirements when applicants have “existing contracts.”<sup>5</sup> Applicants seeking discounts on tariffed services or month-to-month services must file a new FCC Form 470 each year.<sup>6</sup> Once the applicant has complied with the Commission’s competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.<sup>7</sup> The Commission’s rules allow the Administrator to implement an internal filing period for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received (“filing window”).<sup>8</sup> Applications that are received outside this filing window are subject to separate funding priorities under the Commission’s rules.<sup>9</sup> It is to all applicants’ advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

3. Montville filed its FCC Form 471 on January 17, 2000 before the Funding Year 3 filing window closed.<sup>10</sup> The filing window for Funding Year 3 closed on January 18, 2000.<sup>11</sup> Montville’s FCC Form 471 requested support for month-to-month telecommunications services in four separate funding requests (FRNs).<sup>12</sup> Each FRN referenced Montville’s Funding Year 2 FCC Form 470 number 751410000183503.<sup>13</sup> As a result, on April 14, 2000, SLD issued a Funding Commitment Decision Letter to Montville, denying all of its FRNs in full because each of the FRNs required the posting of an FCC Form 470 for Funding Year 3 in order to comply with the Commission’s competitive bidding requirements.<sup>14</sup> By letter filed May 8, 2000, Montville appealed SLD’s funding commitment decision, contending that, based on its review of SLD’s website, the Funding Year 3 FCC Form 470 was unnecessary.<sup>15</sup> On February 27, 2001, SLD denied Montville’s appeal on the grounds that Montville had failed to comply with the Commission’s competitive bidding requirements. SLD explained that the services requested on Montville’s FCC Form 471 for Funding Year 3 were not posted on the SLD’s web site for the required 28-day waiting because

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<sup>5</sup> 47 C.F.R. § 54.511(c).

<sup>6</sup> Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (December 1998) (Form 471 Instructions), at 4.

<sup>7</sup> 47 C.F.R. § 54.504(c).

<sup>8</sup> 47 C.F.R. § 54.507(c).

<sup>9</sup> 47 C.F.R. § 54.507(g).

<sup>10</sup> FCC Form 471, Montville Township Public Schools, filed January 17, 2000 (Montville FCC Form 471).

<sup>11</sup> SLD web site, What’s New (December 6, 1999), <<http://www.sl.universalservice.org/whatsnew/121999.asp>>.

<sup>12</sup> Montville FCC Form 471.

<sup>13</sup> *Id.*

<sup>14</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Dominic Butler, Montville Township School District, dated April 14, 2000 (Funding Commitment Decision Letter).

<sup>15</sup> Letter from Dominic J. Butler, Montville Township Public Schools, filed May 8, 2000.

Montville had erroneously referred to its FCC Form 470 for Funding Year 2, instead of filing and referring to a new FCC Form 470 for Funding Year 3, in its FCC Form 471 for Funding Year 3.<sup>16</sup>

4. In its Waiver Request, Montville does not challenge the Administrator's Decision on Appeal.<sup>17</sup> Instead, Montville requests a waiver of the Funding Year 3 application window in order to correct, complete, and resubmit its FCC Form 471.<sup>18</sup> Montville explains that "unforeseen situations that the school district went through during [the year 2000-2001] did not allow [Montville] to fully complete the application in the appropriate manner."<sup>19</sup>

5. We conclude that Montville has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>20</sup> In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of submitting its forms and other information to SLD for processing within the established deadline if the applicant wishes to be considered with other in-window applicants.

6. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures.<sup>21</sup> In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its application materials if it wishes to be considered within the window. Here, Montville fails to present good cause as to why it could not timely file its application. We therefore find no basis for waiving the filing window deadline.

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<sup>16</sup> Letter from Universal Service Administrative Company, Schools and Libraries Division, to Dominic J. Butler, Montville Township Public Schools, dated February 27, 2001 (Administrator's Decision on Appeal).

<sup>17</sup> Waiver Request.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>21</sup> See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-13364, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. 2000), at para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.").

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Request filed by the Montville Township Public Schools, Montville, New Jersey, on March 23, 2001, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert  
Deputy Chief, Accounting Policy Division  
Common Carrier Bureau